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Atty Dkt No. PP01468.002
Client Dkt No. 2300-1468
PATENT

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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

SHIRLEY et al.

Serial No.: 09/187,661

Group Art Unit: 1653

Filing Date: November 6, 1998

Examiner: F. Moezie

Title: NOVEL IGF-I COMPOSITION AND ITS USE

**REQUEST FOR RECONSIDERATION OF DECISION
DISMISSING PETITION TO GRANT FILING DATE
AND TO REFUND PETITION FEE**

Commissioner for Patents
BOX DAC
Washington, D.C. 20231

Sir:

A Petition to Grant Filing Date of November 6, 1998 was filed on January 5, 1999 which was denied. A Request for Reconsideration of Decision Dismissing Petition to Grant Filing Date was filed June 5, 2000, submitting additional documents to evidence that November 6, 1998 was the correct filing date, was denied as well.

As set forth in MPEP §506.02, applicants hereby petition to grant the proper filing date of November 6, 1998, rather than November 5, 1998 for the present patent application.

The following evidence was enclosed in the Petition to Grant Filing Date filed on January 5, 1999 and the Request for Reconsideration filed June 5, 2000:

1. A copy of the Utility Application Transmittal Cover Sheet for the present application showing the Express Mail Label No. EM166858928US on page 1 and the Express Mail signature dated November 6, 1998, on page 3;
2. A copy of the Utility Application Transmittal Cover Sheet for concurrently filed U.S. Application Serial No. 09/188,051 showing the Express Mail Label No. EM166858945US on page 1 and the Express Mail signature dated November 6, 1998, on page 3;
3. A copy of the Official Filing Receipt for concurrently filed U.S. Application Serial No. 09/188,051;
4. A copy of return postcard from the United States Postal Service (USPS) for concurrently filed U.S. Application Serial No. 09/188,051 showing a proper filing date of November 6, 1998;
5. A copy of the Official Filing Receipt for the present application;
6. A copy of the return post card from the USPS for the present application;
7. A copy of the Express Mail Receipt for Express Mail Label No. EM166858928US as marked received by the USPS (the present application);
8. A copy of the Express Mail Receipt for Express Mail Label No. EM166858945US as marked received by the USPS (the concurrently filed U.S. Application Serial No. 09/188,051);
9. A copy of the Patent Control Docket Sheet for Attorney Docket No. 5784-3 showing the application (assigned U.S. Serial No. 09/187,661) mailed to United States Patent and Trademark Office (PTO) on November 6, 1998;
10. A copy of the Patent Control Docket Sheet for Attorney Docket No. 5784-25 showing the application (assigned U.S. Serial No. 09/188,051) mailed to the PTO on November 6, 1998;
11. A copy of the printout for the Action Screen for the present application U.S. Serial No. 09/187,661 (Attorney Docket No. 5784-3), which was obtained from the Alston & Bird, LLP Patent Database showing the Action Type as "App Sent PTO" on 11/06/98;
12. A copy of the printout for the Action Screen for the concurrently filed application U.S. Serial No. 09/188,051 (Attorney Docket No. 5784-25), which

was obtained from the Alston & Bird, LLP Patent Database showing the Action Type as "App Sent PTO" on 11/06/98;

13. A copy of the face of the trifold for Attorney Docket No 5784-3 showing the application as sent to the PTO on November 6, 1998;
14. A copy of the face of the trifold for Attorney Docket No. 5784-25 showing the application as sent to the PTO on November 6, 1998;
15. A copy of the relevant page from the Secretary's Log of PTO Mailings showing Utility Patent Applications for File Nos. 5784-3 and 5784-25 were transmitted to the PTO on November 6, 1998; and
16. An Affidavit Signed by Rebecca Allen, which stated that she was the secretary who kept the Logbook cited in item 15 above, and she entered the information regarding the date these two applications were transmitted to the PTO.

As previously noted in the Petitions dated January 5, 1999, and June 5, 2000, the present application U.S. Serial No. 09/188,051 and U.S. Serial No. 09/188,051 are related, and great care was taken to file these application on the same day. U.S. Serial No. 09/188,051 was granted the proper filing date of November 6, 1998, however, the present application was given a filing date of November 5, 1998, as shown by copies of the Official Filing Receipt and the return postcard for the application (items 5 and 6).

Applicants have submitted a copy of the Secretary's Log of PTO Mailings, showing that the Utility Applications for Attorney Docket Nos. 5784-3 and 5784-25 were mailed on November 6, 1998 (item 15). A signed Affidavit by Rebecca Allen to this effect was submitted as well (item 16).

The Office stated that the firm's records may not be considered corroborating evidence under 37 CFR §1.10(d)(3) since Rebecca Allen's affidavit did not allege that the logbook entries were created within one business day after the mailing of the application. The petition was therefore dismissed.

Applicants submit herewith additional documents as evidence of November 6, 1998 being the correct filing date under 37 C.F.R. §1.10:

17. An Affidavit signed by Rebecca Allen which states that she is the secretary who kept the Logbook cited in item 15 above, and she entered the information

regarding the date these two applications were transmitted to the PTO within one business day after the mailing of the two applications.

These two applications were intended to have the same filing date, and as such, the applicants concurrently filed them with the USPS on November 6, 1998. Applicants respectfully request the granting of November 6, 1998 as the filing date for the present application.

The Office also stated that the address on the petition differed from the address of record. "Revocation of Power of Attorney and New Power of Attorney" was filed on January 22, 2001 where the address for communications was changed.

There is no error on the part of the applicants, and the applicants respectfully request the refund of the petition fee submitted with the original Petition filed January 5, 1999. It is believed that no fees are required for consideration of this petition. However, the Commissioner is hereby authorized to charge to Deposit Account No. 18-1648 any other fees which may be required by this paper or any overpayment credited.

Please direct all further written communications regarding this application to:

Joseph H. Guth, Esq.
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P.O. Box 8097
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Respectfully submitted,

Date: March 18/2002

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